

WESTERN STATE COLLEGE OF LAW
Fall 2023
Advanced Appellate Advocacy

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- ***Before the first day of class, you must enroll in the Lexis Classroom Page titled “Advanced Appellate Advocacy – Fall 2023 – Roberts.” I will use this web page to post material and to make class announcements throughout the semester. Please sign-up on the web page for automatic email alerts or check the web page regularly because you are responsible for all material and announcements posted on this web page.***

Course Objectives

The goal of this course is to prepare you to compete on the Western State College of Law Honors Moot Court Team – that means writing an outstanding appellate brief and demonstrating outstanding oral advocacy skills. To that end, the course will focus on both the procedural and substantive aspects of appellate practice and will further develop the research, writing, and advocacy skills that were introduced in LWR II.

Students will work on an Appellate Brief throughout the semester based on a case currently pending before the United States Supreme Court. Students will also participate in several practice oral arguments, and will present a 12-minute Final Oral Argument before a panel of judges.

This class is designed to satisfy the Western State upper level writing requirement (ULWR), which is based on guidelines established by the American Bar Association. You must earn a 2.0 or higher on the Appellate Brief to obtain ULWR credit. The final grade in this course will be based on both the Appellate Brief (80%) and the Final Oral Argument (20%).

Learning Outcomes:

- 1) Legal Analysis;
- 2) Legal Research;
- 3) Communication;
- 4) Advocacy of Legal Argument;
- 5) Other Practical Skills

1. Required Texts (bring to each class)

- *A Practical Guide to Appellate Advocacy*, 5th ed., by Mary Beth Beazley, Aspen (2010).
- *The Blue Book: A Uniform System of Citation*, 20th ed.

2. Recommended Texts

Making Your Case: The Art of Persuading Judges, by Bryan Garner and Antonin Scalia, Thompson (2008) (this text is on reserve at the library, and I highly recommend you read the book in its entirety.)

3. **Class Attendance, Participation and Grades**

- Attendance is mandatory. You are allowed to miss a maximum of two classes. You will be required to sign-in at the beginning of each day of class. If you arrive late or leave early, you may be marked absent for the entire class. If you miss more than two (2) classes during the semester, you may be dropped from the class (See the Western State Attendance Policy, reprinted in the Student Handbook.) If you plan to miss a class, you should make arrangements with a classmate to get the notes.
- You must be prepared to meaningfully participate in each class. There is a significant difference between being unprepared and being unable to answer a particular question; you will never be down-graded for venturing an incorrect answer or asking a relevant question. You may have your final course grade increased by up to .2 to reflect consistent and outstanding contributions in class. I reserve the right to decrease the final course grade of any student by up to .2 if the student is consistently unprepared in class, fails to participate in good faith in any in-class group activities (including practice oral arguments), fails to complete any graded or ungraded assignment on time and in good faith, or otherwise fails to conduct themselves in a professional manner in class (this includes, but is not limited to, using your computer or phone during class for non-class related activities, checking emails and texts during class, or otherwise acting in an unprofessional manner in any aspect of the class.) Any incomplete or late assignment, or any assignment that does not appear to have been completed with a good faith effort, will result in a decrease in the student's final grade.
- Your final grade in the course will be based upon: (a) 80% will be based on your final appellate brief; and (c) 20% will be based on your final oral argument.
- All assignments are to be submitted at the start of class. A late assignment is one handed in to me, or uploaded to Turnitin, any time after it is due, even if it is late by one minute.
- A hard copy of the Appellate Brief must be submitted directly to me at the start of class, and also uploaded to Turnitin, by the due date and time; both must be timely in order to comply with the due date.
- You should expect to spend between 2-6 hours per week for out-of-class preparation. The expected out-of-class preparation time is not evenly distributed across every week of the semester; periods of more intense preparation are compensated for by less time required at other parts of the semester. Students should review the syllabus and plan accordingly, noting weeks with longer reading assignments, the due dates for the various graded and ungraded assignments, and office conferences.

5. **Formatting Requirements for all written assignments, except Appellate Brief:**

- Typewritten, double-spaced, Times New Roman 12-point font.
- One-inch margins for the top, bottom, left and right margins.
- Each page must contain a page number in the center of the footer.
- All citations must conform to the Bluebook 20th edition format.

6. **Formatting Requirements for Appellate Brief:**

- Rules for the Final Appellate Brief will be posted on the Lexis Course Web Page.
- The Final Appellate Brief must also comply with the Rules of the Supreme Court of the United States, posted on the Lexis Course Web Page.
- All citations must conform to *The Bluebook* 20th edition format.

7. **DISABILITY SERVICES STATEMENT:**

Western State College of Law provides accommodations to qualified students with disabilities. The Disabilities Services Office assists qualified students with disabilities in acquiring reasonable and appropriate accommodations and in supporting equal access to services, programs, and activities at Western State College of Law.

To seek reasonable accommodations, a student must contact Senior Assistant Dean Donna Espinoza, Student Services Director and Disabilities Services Coordinator. Dean Espinoza's phone number and email address are: (714) 459-1117; despinoza@wsulaw.edu. When seeking accommodations, a student should notify Dean Espinoza of her or his specific limitations and, if known, her or his specific requested accommodations. Students who seek accommodations will be asked to supply medical documentation of the need for accommodation. Classroom accommodations are not retroactive, but are effective only upon the student sharing approved accommodations with the instructor or professor. Therefore, students are encouraged to request accommodations as early as feasible with Dean Espinoza to allow for time to gather necessary documentation. If you have a concern or complaint in this regard, please notify Dean Espinoza; or please notify Dean Marisa Cianciarulo at mcianciarulo@wsulaw.edu or (714) 459-1168. Complaints will be handled in accordance with the College of Law's "Policy against Discrimination and Harassment."

SYLLABUS

Class 1 August 29

- Overview of Appellate Procedure; Standard of Review; Ethical Considerations in Appellate Law.
- Plagiarism; Ethical & Practical Consideration in Using Generative AI
- Moot Court Competitions (competition selection; teammates; team expenses & reimbursement)

Read: *Beazley* pp. 1-93

Class 2 September 5

- Overview of the Appellate Brief - focus on the QP, SOC, SOA, & point headings
- *Rules of the Supreme Court of the United States*; Roberts' Rules

Read: *Beazley* pp. 207-246

* *brief problem will be posted on Lexis Course Web Page on September 8th*

Students must attend Advanced Research Training for Westlaw & Lexis during the week of September 4th

Class 3 September 12

- Research Approach in Appellate Law

Read: *Beazley* pp. 38-72.

Class 4 September 19

- Discuss Initial Research Results
- *Guide for Counsel: Supreme Court Oral Argument*

Read: *Beazley* 93-121

Due: students must bring 6 relevant authorities to class (brief cases; outline/explain relevance of other authorities)

Class 5 September 26

- Oral Argument Practice (in-class practice, including rebuttal)

(moot court students oversee class)

Class 6 October 3

- Organizing the Argument

Read: *Beazley* 253-275.

Due: Draft outline of the Argument Section due; students must bring hard copy to class.

Class 7 October 10

- Formatting, Proofreading, & Citations
- Caption, Tables & Appendices – Roberts' Rules
- Oral Argument

Read: *Beazley* 181-204; 305-312; 357-368

Due: First Draft of Argument Section due; students must bring hard copy to class.

Class 8 **October 17**

- Appellate issues for trial lawyers – *Guest Speaker*

Due: Final Appellate Brief (hardcopy of Brief must be submitted in-class and uploaded to Turnitin) (80% of final grade); 1-page self-critique of oral argument.

Class 9 **October 24**

- Oral Argument Practice (in-class practice, including rebuttal)

Class 10 **October 31**

- Students must schedule a 2-hour practice session with a group of at least 2 other students to practice oral arguments and provide feedback (asynchronous class time)

Class 11 **November 7**

- *Guest Speaker* - Appellate Law Practice
- Moot Court Students: preparing for off-brief oral argument, drafting the bench brief, getting practice judges, creating practice schedule.

Due: 1-page self-critique of oral argument.

Class 12 **November 14**

- Oral Argument Practice (in-class practice, *off brief*, including rebuttal)

Due: 1-page self-critique of oral argument practice session.

Class 13 **November 21**

- Oral Argument Practice (in-class practice, including rebuttal)

Due: 1-page self-critique of oral argument.

Class 14: **November 28**

- Final Oral Argument (20% of final grade)

Western State College of Law – Programmatic Learning Outcomes

Western State College of Law’s curriculum is designed so that every student achieves a level of competency prior to graduation in each of the eight Programmatic Learning Outcomes listed below:

(1) Doctrinal Knowledge

Students will demonstrate knowledge of substantive and procedural law in the core curriculum subjects, including Contracts, Criminal Law, Criminal Procedure, Torts, Real Property, Business Association, Evidence, Civil Procedures, Constitutional Law, Estates, Community Property, Remedies, and Professional Responsibility.

(2) Practice Skills

Students will demonstrate the development of other law practice skills. Each student’s chosen outcomes within this category will be varied based on the student’s particular interests, coursework and work experiences. They may include, but are not limited to, the following topics: oral presentation and advocacy; interviewing; counseling; client service and business development; negotiations, mediation, arbitration, or other alternate dispute resolution methods; advanced legal research and writing (excluding purely academic papers and the first four units earned in introductory first-year legal research and writing class); applied legal writing such as drafting contracts, pleadings, other legal instruments; law practice management or the use of technology in law practice; cultural competency; collaboration or project management; financial analysis, such as accounting, budgeting project management, and valuation; cost benefit analysis in administrative agencies; use of technology, data analyses, or predictive coding; business strategy and behavior; pre-trial preparation, fact investigation, such as discovery, e-discovery, motion practice, assessing evidence, or utilizing experts; trial practice; professional civility and applied ethics; a law clinic that includes a classroom component; or a legal externship that includes a classroom component.

(3) Legal Analysis

Students will demonstrate the ability to identify the factual and legal issues implicated by a fact pattern and to appropriately use cases (including identifying the salient features of an appropriate precedent case, identifying legally significant similarities or differences between the precedent case and a fact pattern and explaining why those are legally significant) and rules (including the ability to connect legally significant facts in a fact pattern to the rule) to predict how a court would decide the issue. Students will also demonstrate the ability to identify and evaluate the public policies of a precedent case or rule, and be able to evaluate how public policy can impact the application of a rule to the legal issue.

(4) Legal Research

Students will demonstrate the ability to locate relevant legal authority using a variety of book and electronic resources, and to properly cite to such legal authority.

(5) Communication

Students will demonstrate the ability to communicate both orally and in writing in a manner appropriate to a particular task to effectively convey the author or speaker's ideas. This includes audience sensitivity in written and oral communication (the ability to adopt a tone, style and level of detail appropriate to the needs, knowledge and expertise of the audience); and written communication basic proficiency (the ability to use the conventions of grammar, spelling, punctuation, diction and usage appropriate to the task and sufficient to convey effectively the author's ideas).

(6) Advocacy of Legal Argument

Students will demonstrate the ability, in both oral and written formats, to evaluate the legal, economic and social strengths and weaknesses of a case and use case and statutory authority as well as public policy to persuade others. Making policy-based arguments includes the ability to identify and evaluate the public policies of a precedent case or rule and their implications, and be able to assert such appropriate arguments to support a particular application or distinction of a precedent case to a legal controversy or a particular resolution of the application of a rule to the legal controversy.

(7) Client Sensitivity and Cultural Competency

Students will demonstrate an awareness of clients' needs and goals, including a sensitivity to clients' background and circumstances (including, but not limited to, socio-economic, gender, race, ethnicity, educational, disability and/or religious background(s)), the ability to make decisions that reflect an appropriate focus on those needs and goals, and awareness that cultural issues may affect the relevance of facts and application of the law.

(8) Legal Ethics

Students will demonstrate the ability to identify ethical issues in law practice contexts and make appropriate decisions to resolve such issues.